THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7636 of 1995

Between:

P.Rushi Kumar, S/o.P.Muttayya.

.. PETITIONER

AND

The Labour Court-III, Hyderabad and another.

.. RESPONDENTS

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ORDER:

Aggrieved by the award of the Labour Court in I.D.No.728 of 1993, dated 09-02-1994, the present writ petition is filed. The petitioner seeks a further direction to the second respondent to reinstate him into service with continuity of service, back wages and all other consequential benefits.

Facts, to the extent necessary for this writ petition, are that the petitioner was appointed as an apprentice under the second respondent on 10-12-1979 and was subsequently confirmed in the post of Operator. According to the petitioner, during

March, 1984, on account of his father's demise, he carried the family burden resulting in deterioration of his health and his falling ill. The petitioner was absent from duty on this account. The petitioner was issued a show cause notice-cum-charge-sheet on 16-07-1986 alleging that he was absent from duty without leave for 78 ¾ days from 01-04-1985 to 31-05-1986 and that it amounted to misconduct under clause 19.105 of the certified Standing Orders of the company. The petitioner submitted his explanation on 25-07-1986 contending that he was sick and due to his bad health condition he was forced to take leave. Not satisfied with his explanation, an enquiry was conducted on 28-08-1986 and the Enquiry Officer submitted his report on 19-08-1987 holding the petitioner guilty of the charges. The disciplinary authority imposed on the petitioner the punishment of dismissal from service, vide proceedings, dated 03-10-1987. The petitioner approached the Labour Court, under Section 2-A(2) of the Industrial Disputes Act, in I.D.No.140 of 1989, which was subsequently re-numbered as I.D.No.728 of 1993. The order of dismissal from service imposed by the second respondent was confirmed by the Labour Court in its award dated 09-02-1994.

Sri V.Viswanatham, learned counsel for the petitioner, would raise the following contentions before this court.

> (1) On completion of an enquiry and after receipt of the enquiry report, the disciplinary authority did not issue a show cause notice with regards the proposed punishment.
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> (2) The Labour Court failed to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act with regards the quantum of punishment and for absence from duty for 78 ¾ days during a period of one year, the punishment of dismissal from service is highly excessive.

Learned counsel would place reliance on the judgment of the Supreme Court in ***SHRI BHAGWAN LAL ARYA v. COMMISSIONER OF POLICE, DELHI***.

Sri P.Nageswar Sree, learned counsel for the second respondent, would contend that no show-cause notice with regards imposition of punishment is prescribed under the certified standing orders of the company and in the absence of any stipulation therein, failure to issue a show cause notice with regards proposed punishment is of no consequence. He would also contend that this plea not having been raised before the Labour Court disentitles the petitioner from raising this question for the first time before this court. Learned counsel would place reliance on ***DELHI TRANSPORT CORPORATION v. SARDAR SINGH*** and ***KARIYANNA v. BHARAT EARTH MOVERS LIMITED*** in support of his submission that for habitual absence, termination of service of an employee was justified.

Before examining the rival contentions, it is necessary to briefly note the findings of the Labour Court in its award in I.D.No.728 of 1993, dated 09-02-1994. Reference was made therein to clause 19.105 of the certified Standing Orders of the company which prescribes that habitual absence without leave or without permission or absence without leave for more than eight days consecutively amounts to mis-conduct. The Labour Court also took note of the fact that in the domestic enquiry, the Deputy Manager had deposed on behalf of the management and had stated that the petitioner's attendance was irregular, he was absenting from duty unauthorisedly and that he had absented for 78 ¾ days during the period 01-04-1985 to 31-05-1986. On being questioned regarding his absence, the petitioner is said to have admitted his guilt. While stating that he was ill, the petitioner informed that he had no evidence to produce on his behalf. The Labour Court held that for the period of his absence, the petitioner could not substantiate that leave was sanctioned before or subsequent thereto, that the petitioner himself had admitted his absence and that the certified standing orders of the company, under clause 19.105,

provides that habitual absence of an employee exceeding 8 days amounts to mis-conduct. The Labour Court also held that before imposing penalty, the respondent had taken all steps and had conducted an enquiry. With regards the quantum of punishment and the petitioner's contention that the penalty of removal was highly disproportionate to the gravity of the charges and on taking note of the contention of the respondents that there were no extenuating circumstances to take a lenient view on account of his past conduct of earlier absenteeism and his unchanged attitude, the Labour Court held that even in the show-cause notice the petitioner was appraised of his earlier mis-conduct and the punishment. The petitioner had abstained from duty without sending intimation, that there was no change in the petitioner's attitude to mend himself to attend duty sincerely and it could therefore not be argued that the punishment was disproportionate. The Labour Court held that had the petitioner applied for leave, there would have been some defence and that the circumstances of the case were not in his favour to modify the punishment.

While the contention of Sri P.Nageswar Sree that the question with regards failure to issue a show-cause notice regarding proposed punishment was not raised before the labour court is not without merit, I do not propose to examine this aspect since it is settled law that in the absence of any such requirement under the certified standing orders of the company, a second show-cause notice with regards proposed punishment need not be given. In this context, reference be made to ***ASSOCIATED CEMENT COMPANIES LIMITED v. T.C.SHRIVASTAVA***, wherein it is held:

> "…….. It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity."

Since in the present case it is not in dispute that the certified standing orders of the company do not provide for issuance of a second opportunity to show cause, as against the proposed punishment, failure to give such an opportunity is of no consequence.

Now with regards the quantum of punishment and the exercise of jurisdiction by the Labour Court under Section 11-A of the Act. In ***BAGWANLAL ARYA's*** case (supra 1), a constable in the Delhi Police fell ill during parade and was sent to the police dispensary as ordered by the Chief Drill Inspector of the parade. He was under treatment and had sent his application for leave on medical grounds supported with medical certificates from the competent medical authorities in accordance with the leave rules. The competent police officer passed an order sanctioning leave without pay for the period of his illness as no other leave was due to him. However, a notice of termination from service was issued to the constable, who resumed duty after submitting his fitness certificate. The services of the constable were, however, terminated under the Temporary Service Rules. His challenge to the termination having failed before the Central Administrative Tribunal and on the matter being carried in appeal, the Supreme Court set aside the order of termination holding that the disciplinary authority had not cared to examine the medical aspect of the absence, that no reasonable disciplinary authority would term absence on medical grounds with proper medical certificates from government doctors as grave mis-conduct, that it was a case of non-application of mind and the very fact that the respondents had asked the constable to undergo medical examination again clearly established that they had received the constable's application with a medical certificate. In this factual situation, the Supreme Court held that the punishment of removal from service, imposed on the constable, was not only highly excessive and disproportionate but was also one, which was not permissible to be imposed as per the Service Rules. From the facts as noted in the

award of the Labour Court, it is clear that the absence of the petitioner for 78 ¾ days, during the period from 01-04-1985 till 31-05-1986, was unauthorized and was not on leave being sanctioned. The Labour Court took note of the fact that neither before his going on leave nor subsequently was his absence regularized by according sanction. Since in ***BHAGWAN LAL ARYA's*** case (supra 1), the constable had obtained leave on medical grounds with proof, in the form of medical certificates, in support of his absence and sanction was accorded for leave without pay for the period of his illness, the judgment of the Supreme Court has no application to the facts of the present case.

In ***DELHI TRANSPORT CORPORATION's*** case (supra 2), the Supreme Court held :

> "…… When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19*(h)* of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.
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> "……. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause *(ii)* of para 4 of the Standing Orders

> shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized……."

It is not in dispute that absence from duty, in the present case, is unauthorized. No evidence has been adduced by the petitioner, either oral or documentary, both before the Enquiry Officer and before the Labour Court. As held in ***SHRI VASTAVA's*** case (supra 4), the burden is on the workman to show that his long period of unauthorized absence did not amount to his lack of interest in work. The other aspect which also requires to be taken note of is that, under Section 11-A of the Industrial Disputes Act, the jurisdiction conferred on Tribunals/Labour Courts to examine the quantum of punishment imposed on the workman, cannot be exercised on sympathectic grounds. It is only in rare cases, where the punishment imposed by the employer is found to be wholly disproportionate, would interference by the Labour Court be called for. The jurisdiction of this court, under Article 226 of the Constitution of India, to interfere with the award of the Tribunal is supervisory and not appellate. It is not for this court, normally, to interfere with the punishment awarded by the Tribunal. It is only in cases where the punishment imposed is one which shocks the conscience of this court or is a punishment which could not have been imposed at all, would interference be justified. Even if this court were of the view that another punishment could have been imposed instead of the punishment as awarded by the Tribunal, since the jurisdiction of this court is not appellate but supervisory, no interference would be called for with regards the quantum of punishment imposed/upheld by Tribunals/Labour Courts.

In the present case, the punishment imposed on the workman is not one, which shocks the conscience of this court nor can it be said to be a punishment which

could not have been imposed at all. Sri V.Viswanatham, learned counsel for the petitioner, would submit that if the punishment of dismissal from service was modified to one of removal, the petitioner would atleast be entitled for the benefit of gratuity. Learned counsel would submit that for unauthorized absence of 78 ¾ days, the petitioner should not be deprived of even his gratuity which he would otherwise have been entitled to. Learned counsel would also submit that depriving the petitioner of his gratuity amount would result in the family undergoing great suffering. While this submission of Sri V.Viswanatham evokes sympathy, it is a matter which should not weigh with this court while exercising its jurisdiction under Article 226 of the Constitution of India. If the punishment imposed cannot be said to be one which shocks the conscience of this court or one which could not be imposed at all, this court is, normally, bound to exercise restraint and refrain from interfering with the punishment imposed by the employer and upheld by the Labour Court.

The writ petition is accordingly dismissed. Needless to state that this order shall not preclude the second respondent from considering the petitioner's case sympathetically for payment of gratuity. No order as to costs.

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07-02-2006

Prv